

Extract from Productivity Commission Research Report

8.8 Regulation of building products

A concern was raised regarding compliance with building products regulation, as implemented through the Building Code of Australia (BCA). The BCA sets out technical requirements for the design and construction of buildings and other structures; it aims to achieve nationally consistent minimum standards for health, safety, amenity and sustainability in buildings. Generally, the BCA only specifies minimum performance requirements, however, where there are health, safety and environmental implications more stringent requirements may be set.

As the regulation of building and construction is the responsibility of state and territory governments, the BCA itself is not legally binding until state and territory governments enact legislation bringing it into force. Currently all states and territories refer to all or most of the BCA.

The Australian Building Codes Board (ABCB) produces and maintains the BCA under an inter-governmental agreement. The ABCB consists of representatives from the Australian Government, state and territory governments, local government and industry.

Lack of compliance with building regulations – structural plywood

While no major concern was raised about the practical requirements of building regulations, the Building Products Innovation Council raised a concern about their enforcement, in particular with respect to the use of structural plywood. Without adequate enforcement of regulation, compliance levels can fall and this can reduce the effectiveness of the regulation. This can potentially impose unnecessary cost on those who comply by reducing their competitiveness in the marketplace relative to those that do not comply.

Regulations on structural plywood used in buildings include references to a number of Australian Standards. These standards require structural plywood to have attained certain grades for the strength of the wood's structure and its bonding, amongst other requirements. The plywood must be branded in a prescribed format to reflect strength grades, the Australian Standards which have been met, and the manufacturer's name or registered mark. Without meeting minimum grades and displaying these markings the plywood cannot be used in the structure of a building, but it can be used for other purposes.

While the BCA does not prescribe enforcement programs, it does state the types of evidence of compliance that are acceptable. Methods for testing compliance of structural plywood are established in Australian Standards, which are referenced in the BCA.

The use of building materials and their compliance with standards is regulated in a number of ways. Firstly, if the product does not meet the grades specified in the branding on it, the supplier, importer or manufacturer may be in breach of the misleading and deceptive conduct provisions of the *Trade Practices Act 1974*. This is administered and enforced by the Australian Competition and Consumer Commission (ACCC).

Second, state and territory governments typically delegate part of their building regulation responsibility to local governments, particularly approvals and inspection of construction.

Additional assurance can be provided to buyers of structural plywood that it meets the required Australian Standards through certification under the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) (box 8.2).

Box 8.2 JAS-ANZ certification and accreditation

It is important to note that the terms certification and accreditation refer to different and specific functions and associated organisations.

- Certification is verification provided by an independent third party regarding processes, products, systems or persons. Certification can be provided to assure customers that a product meets all the requirements of a given Australian or international standard, often where the properties are not directly observable by the consumer.
- Accreditation is an endorsement of a third party conformity assessment body's competence, credibility, independence and integrity in awarding certification.

JAS-ANZ is the government appointed accreditation body for Australia and New Zealand. It is the organisation which provides accreditation to the conformity assessment bodies which can then certify producers of building materials.

Source: JAS-ANZ (2007).

Producers of certified structural plywood are entitled to display the JAS-ANZ symbol in association with the conformance assessment body's mark and a statement that certain Australian standards have been met. This additional layer of assurance is valuable as the structural and bonding strength of plywood are not easily observed.

JAS-ANZ monitors the use of its symbol by accredited conformance assessment bodies. Accredited conformance assessment bodies those who are accredited to certify producers and products are assessed every six months when they first become accredited and this can be relaxed to up to two years for organisations with a good record. Furthermore, JAS-ANZ staff members observe accredited conformance assessment bodies as they certify manufacturers, importers and suppliers two to five times each year.

The JAS-ANZ symbol is a registered trademark and therefore may not be replicated by parties who are not accredited and registered with JAS-ANZ. Misuse of the symbol is a breach of intellectual property laws. However, JAS-ANZ does not routinely monitor non-registered organisations due to the large resource requirements. JAS-ANZ relies on their accredited conformance assessment bodies to highlight any misuse of the JAS-ANZ symbol.

The complaint brought to the attention of the Commission involved the use of nonbranded plywood in structural formwork and potential for misleading claims to go unnoticed. The Engineered Wood Products Association of Australasia made the following comments through the submission by the Building Products Innovation Council:

JAS-ANZ has done a tremendous job as there is no doubt that Australian manufactured materials are amongst the most reliable however, there has been no mandatory requirement that products carry independent accredited product certification ... this is very unlike our major trading partners.

This has created a situation where due to the lack of mandatory certification, low cost inferior products with misleading claims of compliance appear to have equal access to the Australian market as Australian products which carry the additional costs of maintaining credible certification. (sub. 38, p. 2)

It has been suggested by one participant that JAS-ANZ approved certification (or approved overseas equivalent) be compulsory for all building products where non conformities can have serious consequences. However, as noted by the Building Products Innovation Council, this would be excessive for many building products:

While BPIC recognises the particular issue for structural plywood, it does not believe that compulsory Certification is an appropriate response for all building products. The is one of context and each case should be considered on its own merits. (sub. DR59 p. 1)

Assessment

The regulatory framework for ensuring compliance with BCA requirements for the use of structural plywood exists and can be enforced at up to three points in the life of the product:

1. **Manufacturer** — through truth in branding and ACCC enforcement
2. **Marketing** — correct use of JAS-ANZ intellectual property (voluntary product certification)
3. **Installation** — through use of compliant product and local government inspections.

If it is established more broadly in the industry that compliance with structural plywood regulation is a problem (that is, that this is not an isolated case) then stronger action needs to take place. This could be in the form of increased penalties for inaccurate product claims, increased inspection rates to increase the chances of detection, or more rigorous inspections at the installation stage to ensure that the products used in structural formwork conform to mandated standards.

The suggestion by the Building Products Innovation Council to mandate JAS-ANZ certification for structural plywood where it is currently voluntary effectively reduces the number of options for evidence of suitability, from the five currently specified in the BCA to one. Onus would remain on the builder or end user to ensure that product claims are legitimate and that only certified products are used in the structure of the building. Claims would become easier to verify as a central register of JAS-ANZ accredited bodies, processes and personnel exists, however this is a more rigid and restrictive option and could increase business costs.

Initially, it needs to be determined whether or not compliance needs to be improved. If so, then the ABCB can consider options for inducing higher levels of compliance which should include consideration of the three points where enforcement can occur; manufacturing, marketing and installation.